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Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 492.

HIBERNIA ARMSTRONG, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

Cavender & Upshur for Appellant

Colton

FILED DECEMBER 7, 1871.

Post to Saturday March 2 1872

Revised

Ch Davis

SUPREME COURT OF THE UNITED STATES.

No. 492.

HIBERNIA ARMSTRONG, APPELLANT,

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1 *Petition.—Filed Feb'y* 4, 1868.

United States Court of Claims.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES. } No. 3070.

To the honorable the judges of the Court of Claims of the United States:

The petition of Hibernia Armstrong, a citizen and resident of the county of Conway, in the State of Arkansas, where she has continuously resided for more than twelve years last past, and where she now resides.

Petitioner represents that she is the owner of a plantation in said county, whereon she has for said period of time raised cotton for her own profit and benefit; that, in the year 1863, she had on her said plantation a large lot of cotton, her property; that, in the winter of that year, one Burton H. Campbell, at the time an acting United States Treasury agent, thereto duly appointed and qualified, came to her said plantation, and forcibly took and carried away one hundred and two bales of her cotton, as aforesaid, under the pretext that it was "abandoned property," and as such liable to capture by him as such Treasury agent.

Petitioner further represents that said cotton, so taken by said Campbell, was afterwards sold by the proper authorities of the Treasury Department of the United States, and the proceeds paid into the Treasury of said United States as the proceeds of "abandoned property;" that said cotton, at such sale, realized the sum of twenty-six thousand four hundred dollars, after deducting all proper and legal charges and expenses, which sum should be paid to her, and for which she asks judgment against the defendant.

2 Petitioner avers that said cotton was not abandoned, the same being, when so taken by said Campbell, in manner aforesaid, in her possession and under her control, and had always and continuously so been.

Petitioner represents that she has made repeated applications for said proceeds to the Secretary of the Treasury, the legal custodian thereof, but he has refused to pay the same.

Petitioner further represents that she has at all times borne true allegiance to the Government of the United States, and she has not, in any manner or way, voluntarily aided, abetted, or given encouragement to rebellion against said Government.

R. M. CORWINE,
Attorney for Claimant.

UNITED STATES OF AMERICA,
Court of Claims:

Richard M. Corwine, attorney for the above-named Hibernia Armstrong, states that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

R. M. CORWINE.

Subscribed and sworn to before me this day of February, A. D. 1868.

JNO. RANDOLPH,
Ass't Clerk Court of Claims.

3 In the United States Court of Claims, December term, A. D. 1867.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES. } No. 3070.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein; and, not confessing the same or any part thereof, deny each and every the allegations herein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of twenty-six thousand dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN J. WEED,
Assistant Solicitor for the U. S.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain her aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer her claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1853, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

JOHN J. WEED,
Assistant Solicitor for the U. S.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES. } 3070. Dec. term, 1868.

And for a further plea to the said petition the said defendants, by their Attorney General, say that the said claimant ought not to have or maintain her aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of her said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," approved M'ch 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant is barred of her said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

4 In the Court of Claims.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES.

And now, to wit, fourth of April, A. D. 1870, the court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant take nothing by her suit, and that her petition be dismissed.

By the court:

A true copy of record.

5 In the United States Court of Claims.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES. } 3070.

Claimant now comes and petitions the court to grant her appeal from the decision in this case.

R. M. CORWINE,
Att'y for Claimant.

JAN'Y 19, 1871.

Filed Jan'y 23, 1871.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES. } 3070.

Ordered that the appeal in this case be allowed as prayed for.
By the court:
FEBRUARY 13, 1871.

A true copy of record.

6 Court of Claims.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES.

Findings of fact and conclusions of law.

This case having been heard before the chief justice and judges of the Court of Claims, at the city of Washington, on the fourth day of April, 1870, the court, after due deliberation upon the proofs and evidence given at the trial, does hereby, at the time of rendering judgment, find the following facts:

7 The claimant, Mrs. Armstrong, is the widow of Robert Armstrong, deceased.

He has been dead about ten years, and the cotton alleged to have been seized was raised by the hands of the claimant on what is known in the record as the "Armstrong plantation."

In the latter part of 1863, or early in 1864, there was on this plantation about one hundred and twenty bales of cotton, which were taken possession of by the United States military forces, and removed to Lewisburg, in Arkansas, and thence to Little Rock.

Prior to the 9th of July, 1864, one hundred and two bales of this cotton are shown to have been in the hands of the Treasury agents, at

Little Rock, which, with other cotton, were taken and used by the military forces of the United States, at that place, in works of defence around the city. And when the cotton was removed from the fortifications, the marks upon the bales were so obliterated by time and exposure, that a portion of the bales could not be identified. Sixty bales were
8 identified as belonging to "Robert Armstrong," but which in in point of fact, are proven to have belonged to the claimant.

These sixty bales, with other cotton identified as belonging to different parties, and one hundred and seventeen sacks of loose cotton, which came out of the fortifications, could not be identified as the property of any one, were shipped together to Memphis, Tennessee, and thence to the Treasury agent, at Cincinnati, and there sold, and the proceeds paid into the Treasury of the United States.

The claimant is proved to have given no active aid to the rebellion up to the last of September, 1863, when, on the approach of the Union Army, she fled further south, taking with her thirty or forty of her slaves, to avoid their emancipation by the Federal forces. Since that time, the last of September, 1863, there is no proof whatever even tending to show her political status.

By the court.

9 In the United States Court of Claims. Dec. term, 1871.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES. } 3070.

Motion for a new trial filed Dec. 19, 1870, and denied by the court, January 16, 1871. The following additional order was made:

Ordered, that the motion for a new trial in this case, and the evidence upon which such motion is founded, do not form a proper part of the record on appeal, and that the clerk be directed not to return the same to the Supreme Court of the United States.

By the court.

10 In the Court of Claims.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES. } No. 3070.

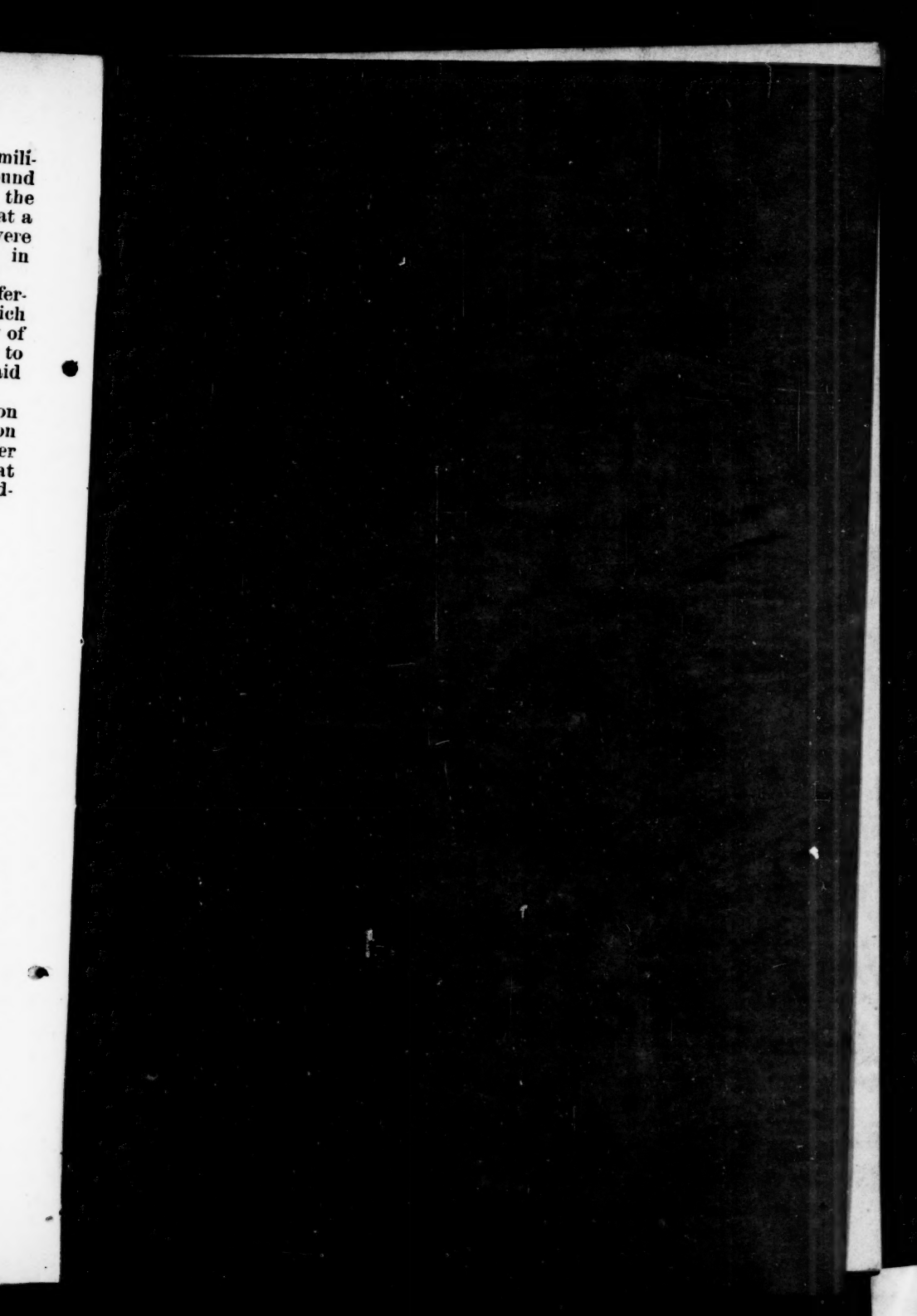
I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the solicitor for claimant for the allowance of an appeal, as filed in the clerk's office, January 23, 1871, and of the order of the court of February 13, 1871, allowing the same; of the findings of facts on which the court founded its judgment; also, order of the court directing the clerk not to make the motion for new trial part of the record to the Supreme Court of the United States on appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this sixth day of December, A. D. 1871.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 492. Hibernia Armstrong, appellant, vs. The United States. Court of Claims. Filed 7th December, 1871.



Supreme Court of the United States.

DECEMBER TERM, 1871.

HIBERNIA ARMSTRONG
vs.
THE UNITED STATES.
492

APPEAL FROM THE COURT OF CLAIMS.

CASE.

Suit was brought under the "abandoned and captured property acts" of 12th March, 1863, (12 U. S. Stats. at Large, 820,) to recover the proceeds of 102 bales of cotton taken by the military from claimant's plantation in Arkansas, where it was raised, in the spring of 1864.

After being turned over to the Treasury Department, all this cotton, with other cotton belonging to other claimants, was put into the fortifications at Little Rock, Arkansas, and when removed the marks were so far obliterated that but 60 bales of claimant's cotton could be identified. All that was put into the fortifications was taken out, and was shipped to the Treasury agents at Cincinnati, there sold, and the proceeds paid into the Treasury.

Claimant's ownership is clearly proved to 102 bales, and she claims the proceeds of them.

It is admitted, and found by the Court of Claims, that she gave no aid or comfort to the enemy, and that she was loyal until the fall of 1863, when she went South with her slaves, on the approach of the Union army; and that is given as the only act of aid and comfort.

After that time her political status is not given.

She was a widow, and had been so for more than ten years; and did then, and has always ever since, resided on her plantation in Arkansas.

ARGUMENT.

1. The claimant made out a good case for relief. No clearer case of loyalty could be established. Up to the time when the State was taken possession of by the federal forces, she had been true to the Union, never having given any aid or comfort to the rebellion. Those were the dark days in Arkansas. Then her neighbors and friends were in the rebellion; her State under Confederate military rule; a despotism which held everybody in its iron grasp: yet, never losing sight of her duty to her country, she resisted the threats and power of the confederates, and refused them aid and comfort—all the while and consistently adhering to the Union.

The Union forces never abandoned their occupancy of Arkansas from that time, but continued to hold it until the rebellion was crushed. There is no evidence that she ever swerved from her position of loyalty to the Union to the end. But it is claimed that she fled further South with her slaves on the approach of the Union forces; and that was an act of giving aid and comfort to the enemy. I have been unable to adopt this mode of reasoning. There is no claim that she went at the bidding of the confederate officials, or that she accompanied their army to aid them. Indeed, it does not appear why she went, except we take the statement in the record, that it was to *keep the Union army from setting her slaves free.*

That fact does not show, or even tend to show, that she meant thereby to aid the rebellion, nor does it appear in what way it did aid that cause, if at all. She had all along consistently refused to aid it, at a time and under circumstances when, had they been so disposed, they had the power to coerce her to contribute of her estate. She did

not then make the move to help that cause, for she had but to remain to meet those who had the power and the disposition to deliver her from the hands of these oppressors. Her motive, therefore, was obviously a different one. The truth is, it was the hope she had to save her property intact. The terrible stories of the rebels, which preceded the coming of the Union army, had filled her with alarm. Her neighbors were seized with fright, and communicated it to her, and she was dragged along in the excitement. Where is there in this giving any voluntary aid and comfort to the enemy? That *must* be voluntary before it is in contravention of the act. How can it be voluntary when there is wanting the *mind* to do the offensive thing? There must be a consenting, with a full understanding of the *force* of the act, before it is voluntary. The effect of the *act* may be to produce the result; yet if it is not so *intended* by the party, she is not responsible. Here Mrs. Armstrong had no such motive, and could not have so intended; for, had she done so, it would have been at variance with her consistent and uniform adherence to the Union, without the slightest good reason to justify it. But were it voluntary or involuntary, in what way could the fact aid the rebellion? The step was purely personal, affecting nobody but herself, and nobody's property but her own.

It is sheer nonsense to say that she took her slaves South to prevent the Union army from setting them free. *That* the army *per se* could not legally do. But they might so far demoralize them as to make their usefulness to her questionable afterwards. In that view, it was natural that she should want to remove them beyond their influence. That being her motive, and not a desire to aid the rebellion, and the act in itself not being unlawful or in contravention of any act of Congress, it cannot be tortured into an *intention* to *voluntarily* aid the rebellion.

2. But it is said that, if this was not an act in aid of the rebellion, then Mrs. Armstrong's claim must fail, because she does not explain what her political *status* was from the

time the Union troops took possession of Arkansas to the close of the rebellion. This is obviously predicated of a misapprehension of the law. In the first place, the Supreme Court has held that the act of June 25, 1865, wherein this rule is laid down, does not apply to a case commenced before the passage of the law. Such a case must be worked out under the act of March 12, 1863. (Padelford's Case, 9 Wallace, 538.)

The petition in this case was filed in March, 1868. That act controls the case, and requires only proof that she gave no aid and comfort to the rebellion. But if that was not the case, then—

3. The act of 1868 does not apply to her case, because, by its very terms, she is exempt from its operation. The 3d section declares, that "the voluntary residence of any such person in any place where, at any time during such residence, the rebel force or organization held sway, shall be *prima facie* evidence that such person did give aid and comfort," &c.

The rebel force did not hold sway in Arkansas, and more especially at and near Little Rock, near where she resided, *after* the time she is proved to have been loyal. Up to that time her record is clear. This passage means that she must show what her political status was during all the time she remained *within* rebel lines, or the *prima facie* case arises and concludes her. Her home and domicile was and is in Conway county, Arkansas, which was within the federal lines from September, 1863, to the close of the rebellion. Within them, during all this period, the rebel forces did not "hold sway;" but the federal forces did.

All the legal intendments consequent upon and flowing out of a residence in Union lines must be held in her favor, since, up to the time the Union troops came there she was and had been loyal.

To give this case any other construction would be to make Congress a party to affixing a penalty to citizens for

residing within Union lines, similar to that affixed to a voluntary residence in rebel lines. This would be a strange perversion of the act of Congress.

Having been proved loyal, for the whole of the war up to the fall of 1863, from that period she is presumed, by that condition of action and mind, to have been loyal during the *whole* of the war, *unless she is proved* to have acted or been otherwise disposed. This is a principle of general, if not universal, application. As in the case of a person proved to have been living, he is presumed to be still living, unless the death is proved, or a period beyond the lapse of man's life has passed since the proof of that fact.

Another example is, in the case of a person alleged to have been insane. Proof of sanity is presumed to continue until the contrary is shown. So, *vice versa*, with respect to an insane person. And so one having a domicile of origin or choice continues, as a presumption of law, until it is proved that he has acquired a different one.

Loyalty being made up of facts and intention, and a person having been proved to have been loyal once, in act and mind, for three-fourths of the period of the war, must be presumed to have continued in the same course of conduct, and the same condition of mind, until its close, unless clear proof be made to the contrary.

1 Greenleaf's Evidence, section 41, states the rule thus: "When, therefore, the existence of a person, a personal relation, or a state of things, is once established by proof, the law presumes that the person, relation, or state of things continues to exist as before, till the contrary is shown, or till a different presumption is raised from the nature of the subject in question."

Mrs. Armstrong having established that she was loyal for a period extending over *three-fourths of the war*, the presumption is that she was loyal all the time, unless the Government proves the contrary to be true. (Same section; also 2 Starkie's Evidence, 688.)

On the whole case, I respectfully submit the judgment below should be reversed.

Another question was presented and discussed in th court below. The proof showed that Mrs. Armstrong owned more than one hundred and two bales; but that number was taken and identified in the possession of the United States Treasury authorities. When Little Rock was threatened by the rebels, the military took all of the cotton then in the possession of the Treasury agents and put in the fortifications. After the siege all of this cotton was removed, but the marks on some of it were damaged by the action of the earth and weather, so that but sixty bales of Mrs. Armstrong's cotton could be identified. But all of the cotton, including Mrs. Armstrong's, was shipped and ultimately sold, and the proceeds passed into the Treasury.

The fact that the marks of some of the bales were obliterated in that way cannot operate to the prejudice of the claimant, since it was the act of the defendant, after the capture or seizure, without the knowledge or consent of the claimant. If the claimant's cotton was *thus* intermixed with cotton belonging to others, it was the act of the Government, who was but a trustee for the claimant; and, under the well-understood doctrine of *confusion of goods*, she cannot suffer by the act of the defendant; more especially where the Government would thus be taking to itself the property of claimant by the advantage of the wrong of its own agents. But that question cannot arise, in view of the fact, that all of the cotton that was put into the fortifications was again delivered to the agents of the Treasury, as before stated, and there is no other claimant for this cotton.

R. M. CORWINE,
Attorney for Appellant.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

[illegible] ARMSTRONG, *Appellant*,
vs.
THE UNITED STATES.
No. 492.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

HIBERNIA ARMSTRONG, *Appellant*,
vs.
THE UNITED STATES. } No. 492.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In this case the Court of Claims has found that the cotton was taken from the "Armstrong plantation," in the latter part of 1863 or early in 1864, by the United States military forces, and removed to Lewisburg, in Arkansas, and thence to Little Rock.

The court has further found:

"The claimant is proved to have given no active aid to the rebellion up to the last of September, 1863, when, on the approach of the Union army, she fled further South, taking with her thirty or forty of her slaves, to avoid their emancipation by the Federal forces. Since that time, the last of September, 1863, there is no proof whatever even tending to show her political status."

It is submitted that this finding not only fails to bring the claimant within the provisions of the acts of Congress touching loyalty, but that her disloyalty to the United States sufficiently appears therefrom.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

HIBERNIA ARMSTRONG, *Appellant*,
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The latter clause of the third section of the act of March 12, 1863, (12 Statutes, 820,) which gives the right of action to claimants of captured and abandoned property, is in these words:

"And any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims; and on proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of such proceeds, after the deduction of any purchase-money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof."

One of the conditions upon which the claimant may have judgment for the proceeds of such property is, that he shall make proof to the satisfaction of the Court of Claims that he has *never* given *any* aid or comfort to the rebellion. And this court has held that the third section of the act of July 25, 1868, (15 Statutes, 775,) has not changed essentially the nature of the proof required of claimants by the former act. (United States against Padelford, 9th Wallace, 538.) In that case the court said:

"The particular description of proof required by the later act (that is, the act of 1868) seems to be included in the more general description of the earlier."

That these acts of Congress require that the loyalty of claimants shall be affirmatively proved, and that no

judgment shall be rendered in favor of any claimant upon presumptions of loyalty, however ingeniously devised, scarcely admits of argument. The loyalty which is essential to the successful prosecution of such claims is a personal quality, and must be made to appear by proof. It must also have been continuous. The language of the statute plainly embraces the entire period of the rebellion. Personal loyalty or adherence to the United States during one or more years, carved out of the period of duration of the rebellion, does not meet the requirement of the statute.

Giving the claimant in this case the benefit of the most favorable construction of the findings, it cannot be claimed that they establish her loyalty at any later point of time than the last of September, 1863. At that time she fled before the advancing Union forces, and, as the Court of Claims has found, not only went further South herself, but took with her thirty or forty of her slaves. This act of hers clearly shows not only where her sympathies were, but to which party she adhered at that point of time during the existence of the rebellion. Whatever may have been her motive for thus fleeing before the Federal forces, the act was wholly inconsistent with the duty of loyalty to the Government, or faithful adherence to its cause. After that time, it appears that she did not even pretend to be loyal to the United States; at least no proof was offered tending to show that she made any such claim.

For this reason, it is respectfully submitted that the Court of Claims properly adjudged that her petition be dismissed.

B. H. BRISTOW,
Solicitor General.